



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Facsimile No.: (417) 334-7278

JUL 22 2013

Eric Farris, Esq.
Farris Law Group, LLC
1015 Highway 248, Suite K
Branson, MO 65616

RE: MUR 6627
Eric Wilber

Dear Mr. Farris:

On August 22, 2012 and September 11, 2012, the Federal Election Commission notified your client, Eric Wilber, of a complaint and supplemental complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). Copies of the complaint and supplemental complaint were forwarded to your client at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, on behalf of your client, the Commission, on July 9, 2013, found no reason to believe that Eric Wilber violated 11 C.F.R. § 109.10 by failing to report an independent expenditure in connection with a newspaper advertisement and dismissed the allegation that Eric Wilber violated 2 U.S.C. § 441d in connection with the newspaper advertisement. Accordingly, the Commission closed its file in the matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

If you have any questions, please contact Kimberly Hart, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6627

RESPONDENT:

Eric Wilber

I. INTRODUCTION

This matter was generated by a complaint filed by Thomas Shane Stilson. *See* 2 U.S.C. § 437(g)(a)(1). C. Michael Moon was a candidate in the 2012 Republican primary in the Missouri seventh congressional district. His principal campaign committee is Mike Moon for Congress and Craig Comstock in his official capacity as treasurer (the "Committee"). Eric Wilber is a Committee volunteer who paid for the placement of a pro-Moon newspaper advertisement in the *Community Free Press*.

The Complaint alleges that Wilber violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations in connection with Wilber's failure to report the costs of a pro-Moon newspaper advertisement and the failure to include a disclaimer on the advertisement.

Wilber filed a response. *See* Wilber Resp. (Sept. 17, 2012). As detailed below, the Commission found no reason to believe that Wilber violated 11 C.F.R. § 109.10 by failing to file an independent expenditure in connection with the newspaper advertisement. Further, the Commission decided to exercise prosecutorial discretion, and dismiss the allegation that Wilber violated the disclaimer provisions pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

II. FACTUAL AND LEGAL ANALYSIS

Complainant alleges that Eric Wilber paid for a newspaper advertisement placed in Springfield, Missouri's *Community Free Press* from July 25-August 7, 2012, advocating Moon's candidacy, failed to report it as an independent expenditure, and failed to provide the proper disclaimer information. Compl. at 4, Ex. H.

Wilber responds that he was a volunteer for the Moon Committee and received two calls from Gregg Hansen, a *Community Free Press* representative, inquiring whether Moon was interested in placing an advertisement. Wilber Resp. at 1. Moon informed Wilber that the Committee did not have sufficient funds to pay for an advertisement. *Id.* When Hansen called again regarding a less expensive advertisement, Wilber subsequently called Hansen back and responded that the Committee did not have the funds to pay for the ad and asked if he could pay for the advertisement himself. *Id.* Upon learning that he could do so, Wilber agreed to place the advertisement with the understanding that it would be his expenditure. *Id.* Wilber does not indicate whether Moon had any knowledge that Wilber was planning to place an advertisement.

The newspaper advertisement reads "Moon for Congress" and states in the upper left-hand corner, "Paid for by Citizen Eric Wilber."¹ See Compl., Ex. H. According to Wilber, he inquired as to the type of disclosure information required, but Hansen was unable to provide any guidance. Pointing to his status as a political novice, Wilber says he was unaware that any contact information needed to be placed on the advertisement. *Id.* The newspaper invoiced the Committee for the advertisement, but Wilber paid it. *Id.* at Attachment (copy of invoice). Wilber states that he did not report the expenditure because it was below the Commission's \$250 threshold and, even if it were not, the report would not have been due at the time of the

¹ See also: <http://www.cfpmidweek.com/weeks/IssuePDFs/vol10i15web.pdf> (last accessed on Jan. 22, 2013).

1 Complaint. *Id.* at 2. Moon responded that the advertisement was paid for on July 25, 2012, and
2 would be reported in the next quarterly report. The Committee, on its October 2012 Quarterly
3 Report, disclosed its receipt of a \$232 in-kind contribution for "advertising" from Wilber on July
4 25, 2012. See October 2012 Quarterly Report (Itemized Disbursements) at p. 2 (filed on Oct. 15,
5 2012).

6 The Committee properly reported newspaper advertisement as an in-kind contribution.
7 We therefore recommend that the Commission find no reason to believe that Wilber violated
8 11 C.F.R. § 109.10 by failing to file an independent expenditure in connection with the
9 newspaper advertisement.

10 The advertisement did not contain an adequate disclaimer. The advertisement constitutes
11 a public communication because it was distributed in the newspaper. 11 C.F.R. §§ 100.26,
12 110.11. It required a disclaimer because it said "Moon for Congress" and therefore was express
13 advocacy under 11 C.F.R. § 100.22(a). The advertisement contained language indicating that
14 Wilber paid for it but did not contain language providing Wilber's permanent street address,
15 telephone number or language indicating that it was not authorized by a candidate, committee or
16 political party as required by the regulations. 11 C.F.R. § 110.11(c)(3).

17 But the disclaimer information in the advertisement provided the public with notice as to
18 who was responsible for the advertisement and the amount of money involved (\$232) was *de*
19 *minimis*. Therefore, the Commission decided to exercise prosecutorial discretion, and dismiss
20 the allegation that Wilber violated the disclaimer provisions pursuant to *Heckler v. Chaney*.